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FITCH EVEN TABIN & FLANNERY
120 SOUTH LASALLE STREET
SUITE 1600
CHICAGO, IL 60603-3406

EXAMINER
TAYLOR, JOSHUA D

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/806,767
Filing Date: March 23, 2004
Appellant(s): NISHIKAWA ET AL.

May Lin DeHaan
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 2, 2010 appealing from the Office action

mailed April 6, 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-20.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The rejection of claim 8 under 35 U.S.C. § 112, second paragraph, as lacking antecedent basis. For this rejection to be overcome, a portion of the amendments filed on June 7, 2010 will be entered; i.e. only those amendments to claims 8 that pertain to the antecedent basis issue. Namely, only the amendments found on page 5, between lines 11 and 16 of the June 7, 2010 amendment shall be entered.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

Sie et al. (Pub. No.: US 2003/0233656) published December 18, 2003.

Fries et al. (Pub. No.: US 2004/0078807) published April 22, 2004

McCoskey et al. (Pub. No.: US 2003/0028889) published February 6, 2003.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5.   Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sie et al.

(Pub. No.: US 2003/0233656) in view of Fries et al. (Pub. No.: US 2004/0078807), and further in

view of McCoskey et al. (Pub. No.: US 2003/0028889).

Regarding claim 1, Sie et al. disclose **a method of selecting content by way of an**

interactive programming guide apparatus (Figs. 11-15, paragraph [0043], lines 12-15,

paragraph [0058], lines 3-5) **comprising the steps of: providing access to a plurality of**

characterizing descriptors as individually correspond to a plurality of discrete selectable

items of audio/video content (Figs. 1A and 1B, element 164, para. [0047]. Sie discloses that the

guide database has characterizing descriptors such as program descriptions, ratings,

advertisements, schedule times, etc.**), wherein the plurality of characterizing descriptors**

comprises at least two elements selected from a group consisting essentially of a

programming network identifier, an indication of source, a network call sign for a station,

a broadcast starting time, a broadcast stopping time, a description of the content,

information pertaining to the content, an indication of a bearer medium, a sample of the

content, a promotional sample of the content, a previously prepared trailer, and a preview

of the content (Figs. 1A and 1B, element 164, para. [0047]. Sie discloses that the guide database

has characterizing descriptors such as program descriptions (which reads on Applicant's "a

description of the content" and "information pertaining to the content"), ratings, advertisements,

schedule times (which reads on Applicant's "a broadcast starting time" and "a broadcast

stopping time"), pricing, usage limits and promotional video and/or audio (which could read on

any of the following: "a sample of the content," "a promotional sample of the content," "a

previously prepared trailer," or "a preview of the content"). Thus, the plurality comprises at least

two elements.**), and providing at least one selection criterion** (Fig. 9, element 920, paragraph

[0088], lines 6-12. Sie discloses that a user can manually enter a selection criteria, such as a

search term.)**; applying the at least one selection criterion with respect to the characterizing**

descriptors of a first plurality of the discrete selectable items of audio/video content and a

second plurality of the discrete selectable items of audio/video content to provide a

resultant selection of the first plurality of discrete selectable items of audio/video content

and the second plurality of the discrete selectable items of audio/video content (paragraph

[0090], lines 1-4. Sie discloses that the guides are customized according to the user preferences.

Since in this part of the claim the first and second plurality are not from different service

providers, they can be read to be different channels, for example.); **displaying programming**

guide information comprising information regarding at least a portion of the resultant

selection (Fig. 15, paragraph [0110], Fig. 11, paragraph [0094]. Sie discloses a linear schedule

customized for the user.); **supporting a programming guide navigation** (Fig. 11, paragraph

[0094], lines 1-3); **reviewing and browsing the information regarding the at least one**

portion of the resultant selection (Fig. 11, paragraph [0094], lines 3-15, paragraphs [0095]-

[0096]. Sie discloses that the guide can be customized by the preferences of the user.); **if**

selecting a particular item of the plurality of discrete selectable items, providing a selection

response (paragraph [0097], lines 1-3. If a user selects a program, that program can be played);

and if not selecting a particular item of the plurality of discrete selectable items, returning

to the supporting step (paragraph [0096]. The user can browse through the programs.).

Sie does not disclose **a multi-source interactive programming guide apparatus,**

wherein the first plurality of the discrete selectable items of audio/video content differ from

the second plurality of the discrete selectable items of audio/video content with respect to at

least one parameter selected from a group consisting essentially of a bearer medium, a

primary transmission service provider, and a data format. However, Fries does (Fig. 4,

paragraphs [0098] and [0100], lines 6-9. Fries shows 2 or 3 programs for each of Cable TV, Sat

TV, Local TV, and VoD TV, which constitutes a plurality of discrete selectable items which

differ with respect to both a bearer medium (cable versus satellite) and service provider (cable

company versus satellite company).). Fries discloses that "with the exemplary EPG manager, the

viewer is freed from the repetitive and confusing task of......conventional approaches, [when] a

viewer must browse (or search) each EPG separately (paragraph [0105], lines 1-2 and paragraph [0104], lines 1-2)." Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the aggregated EPG of Fries to enhance the method of Sie so that a user can use the selection criteria of programs from multiple transmission service providers to form a profile and more easily access programs that may be of interest. This would have produced predictable and desirable results, as it would allow users who had access to various different service providers to still efficiently sort through incoming program data.

Neither Sie nor Fries explicitly disclose all of the following, but in analogous art, McCoskey discloses **providing at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword** (paras. [0044]-[0045], Fig. 6, paras. [0064], [0081] and [0081]-[0089], Figs. 18a and 18b. McCoskey uses, among other things, a keyword to suggest programming to viewers.)**, the at least one smart filter providing step comprising providing each at least one smart filter being customizable for each at least one user** (paras. [0081]-[0089]. A user can customize the search by changing search criteria.)**, wherein the at least one smart filter simultaneously considers content across a plurality of media** (paras. [0017], [0066]. McCoskey discloses performing searches in parallel, which means simultaneously. Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention from the teaching of Sie, Fries and McCoskey that if a user were to be presented with a personalized program guide, such as Sie,

Fig. 15, but with content from a plurality of media (taught in such places as Fries, Fig. 4, or

McCoskey, para. [0017]), that this content should be considered simultaneously so as to present

a user with a complete listing of available programming that meets the filtering requirements.**),**

thereby providing a coordinated joint display comprising a plurality of integrated results,

the plurality of integrated results comprising an aggregate pool of candidate viewing

choices being reducible on a basis of filter selection criteria from at least one element

selected from a group consisting essentially of a plurality of different sources and a

plurality of different data formats (paras. [0017]-[0018], Figs. 18a-18c, paras. [0063] and

[0087]. McCoskey discloses that digital rights management can determine that content can be

translated into a different digital content format (Fig. 18a, para. [0074]), and also discloses that a

Search Request Qualification can include a list on content types (video, audio, software, text,

ebook, etc.), which could obviously be stored in different data formats (MPEG-2 for video, MP3

for audio, HTML for text, etc).**).** It would have been obvious to one of ordinary skill in the art at

the time of the invention to modify Sie and Fries to include the enhanced suggestion techniques

as taught by McCoskey, as this would have produced the predictable and desirable results of

allowing users to further narrow their search for content, as well as expand their options in terms

of from where said content was being received.

Regarding claim 2, the combined teaching of Sie, Fries and McCoskey discloses **the**

method of claim 1, and Sie discloses **further comprising: responding to a remote control by**

scrolling through the programming guide information comprising information regarding

at least a portion of the resultant selection (paragraph [0055], lines 6-9, Fig. 11, paragraph

[0096]).

Regarding claim 3, the combined teaching of Sie, Fries and McCoskey discloses **the method of claim 1,** and Sie discloses **further comprising: detecting user selection of a particular one of the plurality of discrete selectable items of audio/visual content** (paragraph [0104], lines 1-4, Fig. 11, paragraph [0096]).

Regarding claim 4, the combined teaching of Sie, Fries and McCoskey discloses **the method of claim 1,** and Sie discloses **further comprising providing a user database wherein providing at least one selection criterion further comprises using information from the user database to characterize the at least one selection criterion to be provided** (paragraph [0087]. Sie teaches that user information can be used to characterize selection criterion.).

Regarding claim 5, the combined teaching of Sie, Fries and McCoskey discloses **the method of claim 4,** and Sie further discloses **wherein using information from the user database to identify the at least one selection criterion to be provided comprises: accessing information from the user database to discern preferences of a particular user; accessing the characterizing descriptors as individually correspond to a plurality of discrete selectable items of audio/video content; and comparing the preferences of a particular user to the characterizing descriptors of the first plurality of discrete selectable items of audio/video content and the second plurality of discrete selectable items of audio/video content** (paragraph [0088]-[0090]).

Regarding claim 6, the combined teaching of Sie, Fries and McCoskey discloses **the method of claim 4,** and Sie discloses **further comprising: responding to a remote control by**

selecting a particular one of the plurality of discrete selectable items of audio/visual content

(paragraph [0055], lines 6-9).

Regarding claim 7, the combined teaching of Sie, Fries and McCoskey discloses **the**

method of claim 1, and Sie further discloses **wherein providing at least one selection criterion**

comprises: supplying at least one user-defined keyword; and matching the at least one

user-defined keyword with at least one of the characterizing descriptors as individually

correspond to a plurality of discrete selectable items of audio/video content (paragraph

[0082], lines 7-15).

Regarding claim 8 Sie discloses **an interactive programming guide apparatus** (Figs.

11-15, paragraph [0043], lines 12-15, paragraph [0058], lines 3-5) **comprising: a data**

processing unit comprising at least one element selected from a group consisting essentially

of a fixed-purpose dedicated platform, a partially-programmable platform, a cable, and a

satellite set-top box (Fig. 2A, paragraph [0054]); **a plurality of characterizing descriptors,**

each of which individually correspond to a plurality of discrete selectable items of

audio/video content (paragraph [0047], lines 1-4. Sie discloses that the guide database has

characterizing descriptors such as program descriptions, ratings, advertisements, schedule times,

etc.), **wherein the plurality of characterizing descriptors comprises at least two elements**

selected from a group consisting essentially of a programming network identifier, an

indication of source, a network call sign for a station, a broadcast starting time, a broadcast

stopping time, a description of the content, information pertaining to the content, an

indication of a bearer medium, a sample of the content, a promotional sample of the

content, a previously prepared trailer, and a preview of the content (Figs. 1A and 1B,

element 164, para. [0047]. Sie discloses that the guide database has characterizing descriptors

such as program descriptions (which reads on Applicant's "a description of the content" and

"information pertaining to the content"), ratings, advertisements, schedule times (which reads on

Applicant's "a broadcast starting time" and "a broadcast stopping time"), pricing, usage limits

and promotional video and/or audio (which could read on any of the following: "a sample of the

content," "a promotional sample of the content," "a previously prepared trailer," or "a preview of

the content"). Thus, the plurality comprises at least two elements.**), and providing at least one**

selection criterion (Fig. 9, element 920, paragraph [0088], lines 6-12. Sie discloses that a user

can manually enter a selection criteria, such as a search term.)**; a control circuitry adapted to:**

apply the at least one selection criterion with respect to the characterizing descriptors of a

first plurality of the discrete selectable items of audio/video content and a second plurality

of the discrete selectable items of audio/video content to provide a resultant selection of the

first plurality of discrete selectable items of audio/video content and the second plurality of

the discrete selectable items of audio/video content (paragraph [0090], lines 1-4. Sie discloses

that the guides are customized according to the user preferences. Since in this part of the claim

the first and second plurality are not from different service providers, they can be read to be

different channels, for example.)**; display programming guide information comprising**

information regarding at least a portion of the resultant selection (Fig. 15, paragraph [0110],

Fig. 11, paragraph [0094]. Sie discloses a linear schedule customized for the user.)**, and a**

support programming guide navigation (Fig. 11, paragraph [0094], lines 1-3)**, wherein the**

data processing unit utilizes the plurality of characterizing descriptors, the control

circuitry, and the support programming guide navigation (Fig. 2A, paragraph [0054]).

Sie does not disclose **a multi-source interactive programming guide apparatus, wherein the first plurality of the discrete selectable items of audio/video content differ from the second plurality of the discrete selectable items of audio/video content with respect to at least one parameter selected from a group consisting essentially of a bearer medium, a primary transmission service provider, a data format, and at least one selection criteria.** However, Fries does (Fig. 4, paragraphs [0098] and [0100], lines 6-9. Fries shows 2 or 3 programs for each of Cable TV, Sat TV, Local TV, and VoD TV, which constitutes a plurality of discrete selectable items which differ with respect to both a bearer medium (cable versus satellite) and service provider (cable company versus satellite company).). Fries discloses that "with the exemplary EPG manager, the viewer is freed from the repetitive and confusing task of......conventional approaches, [when] a viewer must browse (or search) each EPG separately (paragraph [0105], lines 1-2 and paragraph [0104], lines 1-2)." Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the aggregated EPG of Fries to enhance the method of Sie so that a user can use the selection criteria of programs from multiple transmission service providers to form a profile and more easily access programs that may be of interest. This would have produced predictable and desirable results, as it would allow users who had access to various different service providers to still efficiently sort through incoming program data.

Neither Sie nor Fries explicitly disclose all of the following, but in analogous art, McCoskey discloses **at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one**

recommendation based on at least one parameter selected from a group consisting

essentially of a content nature uniqueness, a viewer identification and a keyword (paras.

[0044]-[0045], Fig. 6, paras. [0064], [0081] and [0081]-[0089], Figs. 18a and 18b. McCoskey

uses, among other things, a keyword to suggest programming to viewers.**), the at least one**

smart filter providing step comprising providing each at least one smart filter being

customizable for each at least one user (paras. [0081]-[0089]. A user can customize the search

by changing search criteria.**), wherein the at least one smart filter simultaneously considers**

content across a plurality of media (paras. [0017], [0066]. McCoskey discloses performing

searches in parallel, which means simultaneously. Furthermore, it would have been obvious to

one of ordinary skill in the art at the time of the invention from the teaching of Sie, Fries and

McCoskey that if a user were to be presented with a personalized program guide, such as Sie,

Fig. 15, but with content from a plurality of media (taught in such places as Fries, Fig. 4, or

McCoskey, para. [0017]), that this content should be considered simultaneously so as to present

a user with a complete listing of available programming that meets the filtering requirements.**),**

thereby providing a coordinated joint display comprising a plurality of integrated results,

the plurality of integrated results comprising an aggregate pool of candidate viewing

choices being reducible on a basis of filter selection criteria from at least one element

selected from a group consisting essentially of a plurality of different sources and a

plurality of different data formats (paras. [0017]-[0018], Figs. 18a-18c, paras. [0063] and

[0087]. McCoskey discloses that digital rights management can determine that content can be

translated into a different digital content format (Fig. 18a, para. [0074]), and also discloses that a

Search Request Qualification can include a list on content types (video, audio, software, text,

ebook, etc.), which could obviously be stored in different data formats (MPEG-2 for video, MP3

for audio, HTML for text, etc).). It would have been obvious to one of ordinary skill in the art at

the time of the invention to modify Sie and Fries to include the enhanced suggestion techniques

as taught by McCoskey, as this would have produced the predictable and desirable results of

allowing users to further narrow their search for content, as well as expand their options in terms

of from where said content was being received.

Regarding claim 9, the combined teaching of Sie, Fries and McCoskey discloses **the
interactive programming guide of claim 8,** and Sie discloses **wherein the control circuitry
further comprises filter means for comparing the at least one selection criterion with at
least some of the characterizing descriptors of the first plurality of discrete selectable items
of audio/video content and the second plurality of discrete selectable items of audio/video
content to provide the resultant selection** (paragraph [0088], lines 6-12).

Regarding claim 10, the combined teaching of Sie, Fries and McCoskey discloses **the
interactive programming guide of claim 8,** and Sie further discloses **wherein the at least one
selection criterion is based, at least in part, upon a preference of a present viewer of the
interactive programming guide** (paragraph [0090], lines 1-9).

Regarding claim 11, the combined teaching of Sie, Fries and McCoskey discloses **the
interactive programming guide of claim 8,** and Sie further discloses **wherein the at least one
selection criterion comprises a user-defined keyword** (paragraph [0088], lines 6-9).

Regarding claim 12, the combined teaching of Sie, Fries and McCoskey discloses **the
interactive programming guide of claim 8,** and Sie further discloses **wherein the at least one
selection criterion is retained in a database** (paragraph [0049], Lines 3-5).

Regarding claim 13, Sie discloses **a method of providing an interactive programming
guide apparatus** (Figs. 11-15, paragraph [0043], lines 12-15, paragraph [0058], lines 3-5)
**comprising the steps of: providing access to a plurality of characterizing descriptors as
individually correspond to a plurality of discrete selectable audio/video programs**
(paragraph [0047], lines 1-4. Sie discloses that the guide database has characterizing descriptors
such as program descriptions, ratings, advertisements, schedule times, etc.**), wherein the
plurality of characterizing descriptors comprises at least two elements selected from a
group consisting essentially of a programming network identifier, an indication of source, a
network call sign for a station, a broadcast starting time, a broadcast stopping time, a
description of the content, information pertaining to the content, an indication of a bearer
medium, a sample of the content, a promotional sample of the content, a previously
prepared trailer, and a preview of the content** (Figs. 1A and 1B, element 164, para. [0047].
Sie discloses that the guide database has characterizing descriptors such as program descriptions
(which reads on Applicant's "a description of the content" and "information pertaining to the
content"), ratings, advertisements, schedule times (which reads on Applicant's "a broadcast
starting time" and "a broadcast stopping time"), pricing, usage limits and promotional video
and/or audio (which could read on any of the following: "a sample of the content," "a
promotional sample of the content," "a previously prepared trailer," or "a preview of the
content"). Thus, the plurality comprises at least two elements.**), and providing at least one**

selection criterion that corresponds to a given individual (Fig. 9, element 920, paras. [0088] and [0090]. Sie discloses that a user can manually enter a selection criteria, such as a search term, and that different users can have different selection criterion.)**; applying the at least one selection criterion with respect to the characterizing descriptors of a first plurality of the discrete selectable items of audio/video programs and a second plurality of the discrete selectable items of audio/video programs to provide a resultant selection of the first plurality of discrete selectable audio/video programs and the second plurality of the discrete selectable audio/video programs** (paragraph [0090], lines 1-4. Sie discloses that the guides are customized according to the user preferences. Since in this part of the claim the first and second plurality are not from different service providers, they can be read to be different channels, for example.)**; displaying programming guide information comprising information regarding at least a portion of the resultant selection** (Fig. 15, paragraph [0110], Fig. 11, paragraph [0094]. Sie discloses a linear schedule customized for the user.)**, and providing a support programming guide navigation** (Fig. 11, paragraph [0094], lines 1-3)**.**

Sie does not disclose **a multi-source interactive programming guide apparatus, wherein the first plurality of the discrete selectable audio/video programs differ from the second plurality of the discrete selectable audio/video programs with respect to at least one parameter selected from a group consisting essentially of a bearer medium, a primary transmission service provider, and a data format.** However, Fries does (Fig. 4, paragraphs [0098] and [0100], lines 6-9. Fries shows 2 or 3 programs for each of Cable TV, Sat TV, Local TV, and VoD TV, which constitutes a plurality of discrete selectable items which differ with respect to both a bearer medium (cable versus satellite) and service provider (cable company

versus satellite company).). Fries discloses that "with the exemplary EPG manager, the viewer is freed from the repetitive and confusing task of......conventional approaches, [when] a viewer must browse (or search) each EPG separately (paragraph [0105], lines 1-2 and paragraph [0104], lines 1-2)." Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the aggregated EPG of Fries to enhance the method of Sie so that a user can use the selection criteria of programs from multiple transmission service providers to form a profile and more easily access programs that may be of interest. This would have produced predictable and desirable results, as it would allow users who had access to various different service providers to still efficiently sort through incoming program data.

Neither Sie nor Fries explicitly disclose all of the following, but in analogous art, McCoskey discloses **providing at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification and a keyword** (paras. [0044]-[0045], Fig. 6, paras. [0064], [0081] and [0081]-[0089], Figs. 18a and 18b. McCoskey uses, among other things, a keyword to suggest programming to viewers.**), the at least one smart filter providing step comprising providing each at least one smart filter being customizable for each at least one user** (paras. [0081]-[0089]. A user can customize the search by changing search criteria.**), wherein the at least one smart filter simultaneously considers content across a plurality of media** (paras. [0017], [0066]. McCoskey discloses performing searches in parallel, which means simultaneously. Furthermore, it would have been obvious to

one of ordinary skill in the art at the time of the invention from the teaching of Sie, Fries and

McCoskey that if a user were to be presented with a personalized program guide, such as Sie,

Fig. 15, but with content from a plurality of media (taught in such places as Fries, Fig. 4, or

McCoskey, para. [0017]), that this content should be considered simultaneously so as to present

a user with a complete listing of available programming that meets the filtering requirements.),

thereby providing a coordinated joint display comprising a plurality of integrated results,

the plurality of integrated results comprising an aggregate pool of candidate viewing

choices being reducible on a basis of filter selection criteria from at least one element

selected from a group consisting essentially of a plurality of different sources and a

plurality of different data formats (paras. [0017]-[0018], Figs. 18a-18c, paras. [0063] and

[0087]. McCoskey discloses that digital rights management can determine that content can be

translated into a different digital content format (Fig. 18a, para. [0074]), and also discloses that a

Search Request Qualification can include a list on content types (video, audio, software, text,

ebook, etc.), which could obviously be stored in different data formats (MPEG-2 for video, MP3

for audio, HTML for text, etc).). It would have been obvious to one of ordinary skill in the art at

the time of the invention to modify Sie and Fries to include the enhanced suggestion techniques

as taught by McCoskey, as this would have produced the predictable and desirable results of

allowing users to further narrow their search for content, as well as expand their options in terms

of from where said content was being received.

Regarding claim 14, the combined teaching of Sie, Fries and McCoskey discloses **the**

method of claim 13, and Sie further discloses **wherein providing at least one selection**

criterion that corresponds to a given individual further comprises ascertaining an identity of a present viewer (paragraph [0090], lines 6-9).

Regarding claim 15, the combined teaching of Sie, Fries and McCoskey discloses the method of claim 14, and Sie further discloses wherein providing at least one selection criterion that corresponds to a given individual further comprises using the identity to recall at least one previously stored selection criterion (paragraph [0091], lines 4-7).

Regarding claim 16, the combined teaching of Sie, Fries and McCoskey discloses the method of claim 1, and Sie discloses wherein displaying programming guide information further comprises displaying programming guide information comprising information regarding at least a portion of the resultant selection, wherein the resultant selection includes two or more discrete selectable items of audio/video content from at least one of the first plurality of discrete selectable items of audio/video content and the second plurality of discrete selectable items of audio/video content (Fig. 15, paragraph [0110], Fig. 11, paragraph [0094]).

Regarding claim 17, the combined teaching of Sie, Fries and McCoskey discloses the method of claim 13, and Sie discloses wherein displaying programming guide information further comprises displaying programming guide information comprising information regarding at least a portion of the resultant selection, wherein the resultant selection includes two or more discrete selectable items of audio/video content from at least one of the first plurality of discrete selectable audio/visual programs and the second plurality of

discrete selectable audio/visual programs (Fig. 15, paragraph [0110], Fig. 11, paragraph [0094]).

Regarding claim 18, the combined teaching of Sie, Fries and McCoskey discloses **the method of claim 1,** and Sie discloses **further comprising: responding to a remote control by scrolling through the programming guide information comprising information regarding at least a portion of the resultant selection** (Fig. 11, paragraph [0096], lines 1-3)**; detecting user selection of a particular one of the plurality of discrete selectable items of audio/visual content** (Fig. 11, paragraph [0096], lines 3-9)**; providing a user database wherein providing at least one selection criterion further comprises using information from the user database to characterize the at least one selection criterion to be provided** (paragraph [0087]. Sie teaches that user information can be used to characterize selection criterion.)**; and responding to a remote control by selecting a particular one of the plurality of discrete selectable items of audio/visual content** (Fig. 11, paragraph [0097], lines 1-3)**, wherein using information from the user database to identify the at least one selection criterion to be provided comprises: accessing information from the user database to discern preferences of a particular user; accessing the characterizing descriptors as individually correspond to a plurality of discrete selectable items of audio/video content; and comparing the preferences of a particular user to the characterizing descriptors of the first plurality of discrete selectable items of audio/video content and the second plurality of discrete selectable items of audio/video content** (paragraph [0088]-[0090])**, wherein providing at least one selection criterion comprises: supplying at least one user-defined keyword** (paragraph [0082], lines 7-15)**; and matching the at least one user-defined keyword with at least one of the**

characterizing descriptors as individually correspond to a plurality of discrete selectable items of audio/video content (paragraph [0088]), **and wherein displaying programming guide information further comprises displaying programming guide information comprising information regarding at least a portion of the resultant selection, wherein the resultant selection includes two or more discrete selectable items of audio/video content from at least one of the first plurality of discrete selectable items of audio/video content and the second plurality of discrete selectable items of audio/video content** (Fig. 11, paragraph [0094]).

Regarding claim 19, the combined teaching of Sie, Fries and McCoskey discloses **the interactive programming guide of claim 8,** and Sie discloses **wherein the control circuitry further comprises filter means for comparing the at least one selection criterion with at least some of the characterizing descriptors of the first plurality of discrete selectable items of audio/video content and the second plurality of discrete selectable items of audio/video content to provide the resultant selection** (paragraph [0088], lines 6-12), **wherein the at least one selection criterion is based, at least in part, upon a preference of a present viewer of the interactive programming guide** (paragraph [0090], lines 1-9), **wherein the at least one selection criterion comprises a user-defined keyword** (paragraph [0088], lines 6-9), **and wherein the at least one selection criterion is retained in a database** (paragraph [0049], lines 3-5).

Regarding claim 20, the combined teaching of Sie, Fries and McCoskey discloses **the method of claim 13,** and Sie discloses **wherein providing at least one selection criterion that corresponds to a given individual further comprises ascertaining an identity of a present**

viewer (paragraph [0090], lines 6-9)**, wherein providing at least one selection criterion that corresponds to a given individual further comprises using the identity to recall at least one previously stored selection criterion** (paragraph [0091], lines 4-7)**, and wherein displaying programming guide information further comprises displaying programming guide information comprising information regarding at least a portion of the resultant selection, wherein the resultant selection includes two or more discrete selectable items of audio/video content from at least one of the first plurality of discrete selectable audio/visual programs and the second plurality of discrete selectable audio/visual programs** (Fig. 15, paragraph [0110], Fig. 11, paragraph [0094])**.**

(10) Response to Argument

A.   Rejection of claim 8 under U.S.C. § 112 for lack of antecedent basis.

This rejection is withdrawn in view of Appellant' s argument.

B.   Rejection of claims 1-20 over Sie, Fries and McCoskey

On page 14, beginning at line 22, Appellant states:

The law, under 35 U.S.C. § 103, is well settled that, for a cited reference or a combination of references to render obvious a claimed invention, the combination of the claimed elements and limitations must be taught, suggested, motivated, or otherwise obviated by that cited reference or that combination of cited references, even under KSR v. Teleflex, Inc., et al., 550 U.S. 398, 127 S.Ct. 1727, 82 U.S.P.Q.2d 1385 (2007). See also Exparte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985); In re Hoch, 428 F.2d 1341, 1342 n.3 166 USPQ 406, 407 n. 3 (CCPA 1970); and Graham v. John Deere, 383 U.S. 1,148 USPQ 459 (1966).
In particular, KSR v. Teleflex holds that the proper objective framework for such an obviousness inquiry is set forth in Graham v. John Deere Co., 383 U.S. 1 (1966), (KSR International v. Teleflex, Inc. et al., Slip Op 04-1350 at 17): "Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved." [Emphasis added.]

Examiner maintains that the instant rejection meets the requirements as set forth in the

pertinent laws to obviate the claimed elements and limitations of Appellant's invention.

On page 15, beginning at line 6, Appellant states:

The combination of elements and limitations, inter alia, that patentably distinguish independent Claim 1, as amended on January 25, 2010, from Sic et al. (US 2003/0233656), even in view of Fries et al. (US 2004/0078807), and even in further view of McCoskey et al. (US 2003/0028889), are as follows:

a. "providing access to a plurality of characterizing descriptors as individually correspond to a plurality of discrete selectable items of audio/video content,"

b. "wherein the plurality of characterizing descriptors comprises at least two elements selected from a group consisting essentially of a programming network identifier, an indication of source, a network call sign for a station, a broadcast starting time, a broadcast stopping time, a description of the content, information pertaining to the content, an indication of a bearer medium, a sample of the content, a promotional sample of the content, a previously prepared trailer, and a preview of the content," and

c. "wherein a first plurality of the discrete selectable items of audio/video content differ from a second plurality of the discrete selectable items of audio/video content with respect to at least one parameter selected from a group consisting essentially of a bearer medium, a primary transmission service provider, and a data format;"

d. **"providing at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword, the at least one smart filter providing step comprising providing each at least one smart filter being customizable for each at least one user, wherein the at least one smart filter simultaneously considers content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different data formats;"**

e. "providing at least one selection criterion;"

f. "applying the at least one selection criterion with respect to the characterizing descriptors of the first plurality of the discrete selectable items of audio/video content and the second plurality of the discrete selectable items of audio/video content to provide a resultant selection of

the first plurality of discrete selectable items of audio/video content and the second plurality of
the discrete selectable items of audio/video content;"

g.   "displaying programming guide information comprising information regarding at least a
portion of the resultant selection;"

h.   "supporting a programming guide navigation;"

i.   "reviewing and browsing the information regarding the at least one portion of the
resultant selection;"

j.   "if selecting a particular item of the plurality of discrete selectable items, providing a
selection response;" and

k.   "if not selecting a particular item of the plurality of discrete selectable items, returning to
the supporting step." [Emphasis added.]

      Accordingly, Claims 2-7, 16, and 18, subsuming the combination of elements and
limitations of base Claim 1 by dependency, are also believed to be patentably distinct over Sie et
al. (US 2003/0233656), even in view of Fries et al. (US 2004/0078807), and even in further view
of McCoskey et al. (US 2003/0028889).

      Examiner sees no specific argument related to the instant rejection. Therefore, please

refer to Examiner's rejection of claim 1 as listed in section 9, above, which addresses the

limitations of claim 1 as listed by Appellant.

      On page 16, beginning at line 25, Appellant states:

      The combination of elements and limitations, inter alia, that patentably distinguish
independent Claim 8, as amended on January 25, 2010, from Sie et al. (US 2003/0233656), even
in view of Fries et al. (US 2004/0078807), and even in further view of McCoskey et al. (US
2003/0028889), are as follows:

a.   "a data processing unit comprising at least one element selected from a group consisting
essentially of a fixed-purpose dedicated platform, a partially-programmable platform, a cable,
and a satellite set-top box;"

b.   "a plurality of characterizing descriptors, each of which individually correspond to a
plurality of discrete selectable items of audio/video content,"

c.   "wherein the plurality of characterizing descriptors comprises at least two elements
selected from a group consisting essentially of a programming network identifier, an indication
of source, a network call sign for a station, a broadcast starting time, a broadcast stopping time, a
description of the content, information pertaining to the content, an indication of a bearer
medium, a sample of the content, a promotional sample of the content, a previously prepared
trailer, and a preview of the content," and

d.   '"wherein a first plurality of the discrete selectable items of audio/video content differ from a second plurality of the discrete selectable items of audio/video content with respect to at least one parameter selected from a group consisting essentially of a bearer medium, a primary transmission service provider, a data format, and at least one selection criterion;"

e.   **"at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter comprising an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword, each at least one smart filter being customizable for each at least one user, wherein the at least one smart filter simultaneously considers content across a plurality of media, whereby a coordinated joint display, comprising a plurality of integrated results, is provided, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different data formats;"** and

f.   "a control circuitry adapted to:"

g.   "apply the at least one selection criterion with respect to the characterizing descriptors of the first plurality of the discrete selectable items of audio/video content and the second plurality of discrete selectable items of audio/video content to provide a resultant selection of the first plurality of discrete selectable items of audio/video content and the second plurality of discrete selectable items of audio/video content;"

h.   "display programming guide information comprising information regarding at least a portion of the resultant selection;" and

i.   "a support programming guide navigation,"

j.   "wherein the data processing unit utilizes the plurality of characterizing descriptors, the plurality of cascading filters, the control circuitry, and the support programming guide navigation." [Emphasis added.]

        Accordingly, Claims 9-12 and 19, subsuming the combination of elements and limitations of base Claim 8 by dependency, are also believed to be patentably distinct over Sie et al. (US 2003/0233656), even in view of Fries et al. (US 2004/0078807), and even in further view of McCoskey et al. (US 2003/0028889).

        Examiner sees no specific argument related to the instant rejection. Therefore, please

refer to Examiner's rejection of claim 8 as listed in section 9, above, which addresses the

limitations of claim 8 as listed by Appellant.

        On page 18, beginning at line 11, Appellant states:

The combination of elements and limitations, inter alia, that patentably distinguish independent Claim 13, as amended on January 25, 2010, from Sic et al. (US 2003/0233656), even in view of Fries et al. (US 2004/0078807), and even in further view of McCoskey et al. (US 2003/0028889), are as follows:

a.   "providing access to a plurality of characterizing descriptors as individually correspond to a plurality of discrete selectable audio/visual programs,"

b.   "wherein the plurality of characterizing descriptors comprises at least two elements selected from a group consisting essentially of a programming network identifier, an indication of source, a network call sign for a station, a broadcast starting time, a broadcast stopping time, a description of the content, information pertaining to the content, an indication of a bearer medium, a sample of the content, a promotional sample of the content, a previously prepared trailer, and a preview of the content," and

c.   "wherein a first plurality of the discrete selectable audio/visual programs differ from a second plurality of the discrete selectable audio/visual programs with respect to at least one parameter selected from a group consisting essentially of a bearer medium, a primary transmission service provider, and a data format;"

d.   **"providing at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword, the at least one smart filter providing step comprising providing each at least one smart filter being customizable for each at least one user, wherein the at least one smart filter simultaneously considers content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group cons/sting essentially of a plurality of different sources and a plurality of different data formats;"**

e.   "providing at least one selection criterion that corresponds to a given individual;"

f.   "applying the at least one selection criterion with respect to the characterizing descriptors of the first plurality of the discrete selectable audio/visual programs and the second plurality of the discrete selectable audio/visual programs to provide a resultant selection of the first plurality of the discrete selectable audio/visual programs and the second plurality of the discrete selectable audio/visual programs;"

g.   "displaying programming guide information comprising information regarding at least a portion of the resultant selection;" and

h.   "providing a support programming guide navigation." [Emphasis added.]

Accordingly, Claims 14, 15, 17, and 20, subsuming the combination of elements and limitations of base Claim 13 by dependency, are also believed to be patentably distinct over Sie et al. (US 2003/0233656), even in view of Fries et al. (US 2004/0078807), and even in further view of McCoskey et al. (US 2003/0028889).

Examiner sees no specific argument related to the instant rejection. Therefore, please

refer to Examiner's rejection of claim 13 as listed in section 9, above, which addresses the

limitations of claim 13 as listed by Appellant.

On page 19, beginning at line 24, Appellant states:

Analyzing the facts as to Claims 1-20 in relation to Issue B, the Examiner concedes that
Sie et al. do not teach "a multi-source interactive programming guide apparatus, wherein the first
plurality of discrete selectable items of audio/video content differ from the second plurality of
the discrete selectable items of audio/video content with respect to at least one parameter
selected from a group consisting essentially of a bearer medium, a primary transmission service
provider, and a data format" and that Sie et al. and that Fries et al. do not teach "providing at
least one smart filter for facilitating determination of a particular one of the discrete selectable
items of data, the at least one smart filter providing step comprising providing an enhanced
suggestion engine for making at least one recommendation based on at least one parameter
selected from a group consisting essentially of a content nature uniqueness, a viewer
identification, and a keyword, ... the at least one smart filter providing step comprising providing
each at least one smart filter being customizable for each at least one user, ... wherein the at least
one smart filter simultaneously considers content across a plurality of media" (April 6, 2010,
Final Office Action, Section 5, pp. 5-6).

Examiner agrees with Appellant's general summary of what the cited references do not

teach, as stated in the instant rejection, which is provided in section 9, above.

On page 20, beginning at line 8, through page 20, line 14, Appellant gives a general

description of the cited prior art, drawn from the abstracts of the associated document. Examiner

agrees that these descriptions give a general overview of the related prior art, but notes they these

brief descriptions do not contain all of the teaching contained in the associated references.

On page 21, beginning at line 16, Appellant states:

Noteworthy is that the newly cited reference, McCoskey et al., does not teach, suggest, or motivate, either expressly or implicitly, its aggregator is being even capable of performing a **simultaneous consideration of content across a plurality of media in a plurality of data formats.** McCoskey et al. merely disclose that the "aggregator may also comprise one or more crawlers, such as a content crawler, to look for program content in one or more digital communication networks" (Abstract). McCoskey et al. never disclose that these crawlers actually perform their functions simultaneously (Paras. 92 and 97), notwithstanding the Examiner's belief that a plurality of crawlers would somehow behave in a contemporaneous manner. McCoskey et al. never disclose that the aggregator comprises a "smart filter" per se anywhere in the reference.

In response, McCoskey discloses performing searches in parallel, which means

simultaneously (para. [0066]). Furthermore, it would have been obvious to one of ordinary skill

in the art at the time of the invention from the teaching of Sie, Fries and McCoskey that if a user

were to be presented with a personalized program guide, such as Sie, Fig. 15, but with content

from a plurality of media (taught in such places as Fries, Fig. 4, or McCoskey, para. [0017]), that

this content should be considered simultaneously so as to present a user with a complete listing

of available programming that meets the filtering requirements.

Regarding Appellant's assertion that the McCoskey reference does not contain any

reference to a "smart filter," Examiner reminds Appellant that although Appellant may be a

lexicographer, and thus define certain terms to have a specific meaning, Examiner is only

required to find prior art that teaches the functionality of such a defined term. Therefore,

Examiner asserts that the combined teaching of Sie, Fries and McCoskey discloses the

functionality of Appellant's claimed "smart filter," even though none of the references mention it

by name. Again, McCoskey discloses the functionality of Appellant's enhanced suggestion

engine, such as recommending a program based on a keyword (paras. [0044]-[0045], Fig. 6,

paras. [0064], [0081] and [0081]-[0089], Figs. 18a and 18b), and thus McCoskey meets

Appellant's lexicography "enhanced suggestion engine."

For the record, Examiner notes that throughout the priority document and the documents

incorporated by reference into the instant application, the term "smart filter" is found two times,

both times in the following context: "Advantages: -Smart filter :: simultaneously consider

content across all media available. Filter can also be customizable by a user. If there is multiple

member in the family, unique filter per user can be set up (U.S. Provisional Application Serial

No. 60/520,752, p. 9, ¶ 6 and p. 11, ¶ 6.)." There is no other mention or definition of the term

"smart filter" anywhere else in the related documents. Appellant's disclosure in its entirety does

not explain, beyond the definition of a smart filter, how the use of smart filters improves the

claimed invention over the state of the art at the time of the invention. Since Appellant's

definition of a smart filter is disclosed by the combined teachings of Sie, Fries and McCoskey, as

stated above, the fact that McCoskey does not use the term "smart filter" is irrelevant.

On page 21, beginning at line 27, Appellant states:

Additionally, although McCoskey et al. teach a "content suggestion engine," nowhere
does the reference ever teach, or even imply, that such "content suggestion engine" is, in any
way, "enhanced" (Figs, 14a and 14b; Paras. 97 and 98) or that it in any way **searches and
analyzes content for its unique nature as claimed in the present invention.** McCoskey et al.
also merely teach the selection of programming in terms of "content format," not actual "data"
format. Although McCoskey et al. teach reformatting a searched piece of content (searched on
other bases), McCoskey et al. do not teach, suggest, or motivate, any filter selection criteria
based on a plurality of different sources and a plurality of different data formats in the manner of
the present invention. Furthermore, the search criteria of McCoskey et al. do not comprise two or
more of a programming network identifier, an indication of source, a network call sign for a

station, a broadcast starting time, a broadcast stopping time, a description of the content, information pertaining to the content, an indication of a bearer medium, a sample of the content, a promotional sample of the content, a previously prepared trailer, and a preview of the content resulting in an ability to make a recommendation based on a **content nature uniqueness.**

In the same vein as the above argument, the fact that the word "enhanced" is not used to describe a content suggestion engine in McCoskey is irrelevant, so long as the functionality of Appellant's own lexicography "enhanced content suggestion engine" is taught. Again, McCoskey discloses the functionality of Appellant's enhanced suggestion engine, such as recommending a program based on a keyword (paras. [0044]-[0045], Fig. 6, paras. [0064], [0081] and [0081]-[0089], Figs. 18a and 18b), and thus McCoskey meets Appellant's lexicography "enhanced suggestion engine."

For the record, Examiner notes that throughout the priority document and the documents incorporated by reference into the instant application, the term "enhanced suggestion engine" is found one time, in the following context: "Advantages: Enhanced suggestion engine provides suggestions/recommendation based on (either alone or in cooperation a) Nature of the content (uniqueness: a one time event may have priority over a repeating event) b) viewer ID: Genre, Actor, time, channel, keyword, location c) Maybe pre determined, customizable, or user defined keywords (U.S. Provisional Application Serial No. 60/520,752, p. 11, ¶ 6.)." There is no other mention or definition of the term "enhanced suggestion engine" anywhere else in the related documents. Appellant's disclosure in its entirety does not explain, beyond the definition of an enhanced suggestion engine, how the use of an enhanced suggestion engine improves the claimed invention over the state of the art at the time of the invention. Since Appellant's definition of an enhanced suggestion engine is disclosed by the combined teachings of Sie, Fries

and McCoskey, as stated above, the fact that McCoskey does not use the term "enhanced suggestion engine " is irrelevant.

Regarding Appellant's assertion that McCoskey does not disclose "search[ing] and analyz[ing] content for its unique nature as claimed in the present invention," Examiner responds that there is not language in the current claims that requires such a teaching. The only occurrence of the term "content nature uniqueness" is in the independent claims (around line 18 of claim 1, for example), and this term is not even positively required by the claim language, as it appears in the following context: **the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword.** Since McCoskey discloses a keyword, the other two parameters. i.e. content nature uniqueness and viewer identification, are not required because the claim language is written as "**selected from a group consisting essentially of," see MPEP 803.02[R-5] and 2111.03[R-3]**.

Regarding Appellant's assertion that "McCoskey et al. also merely teach the selection of programming in terms of "content format," not actual "data" format," Examiner responds that McCoskey discloses that user is able to request the delivery of a content in a digital coding schemes, compression and content format (see page 14, para. [0118], i.e., HDTV format.). Since the delivering content is digitized using HDTV format, one of ordinary skill in the art would reads digitized content using HDTV format as Appellant's "data format" (see paras. [0111]; [0118]; and [0119]).

Regarding Appellant's statement that "the search criteria of McCoskey et al. do not comprise two or more of a programming network identifier, an indication of a source, [etc]," Examiner responds that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In this instance, this claim limitation is taught by Sie (Figs. 1A and 1B, element 164, para. [0047]. Sie discloses that the guide database has characterizing descriptors such as program descriptions (which reads on Appellant's "a description of the content" and "information pertaining to the content"), ratings, advertisements, schedule times (which reads on Appellant's "a broadcast starting time" and "a broadcast stopping time"), pricing, usage limits and promotional video and/or audio (which could read on any of the following: "a sample of the content," "a promotional sample of the content," "a previously prepared trailer," or "a preview of the content").).

Beginning on page 22, line 11, and continuing through page 25, line 23, Appellant presents the alleged "salient features" of the invention without clearly pointing out the specific errors but merely recites that "Accordingly, Claims 2-7, 9-12 and 14-20, submitting the limitations of their respective base claims by dependency, are also believed to overcome the cited art." In view of that the Examiner again asserts that Examiner's rejections of the

independent claims 1, 8 and 13 are proper , as discussed above, thereby Appellant's "salient

features" do not overcome the cited prior art of record.

        On page 25, beginning at line 27, Appellant states:

        In addition, the Appellants respectfully submit that the April 6, 2010, Final Office Action
has not properly ascertained the differences between the prior art and the claims at issue or
resolved the level of ordinary skill in the pertinent art. Reiterating, the Appellants recognize that
an obviousness rejection may be proper in certain instances in light of KSR v. TeleJlex, Inc., et
at., 550 U.S. 398, 127 S.Ct. 1727, 82 U.S.P.Q.2d 1385 (2007). However, KSR v. TeleJlex
specifically holds that the proper objective framework for such an obviousness inquiry is still set
forth in Graham v. John Deere Co., 383 U.S. 1 (1966), (KSR International v. Teleflex, Inc. et al.,
Slip Op 04-1350 at 17): "Under § 103, the scope and content of the prior art are to be
determined; differences between the prior art and the claims at issue are to be ascertained; and
the level of ordinary skill in the pertinent art resolved." [Emphasis added.]
        Specifically, the Appellants respectfully submit that the Examiner has not properly
ascertained the differences between the prior art and the claims at issue or resolved the level of
ordinary skill in the pertinent art. For example, the Appellants note that a distinction between the
tertiary reference, McCoskey et al., and presently claimed invention is that McCoskey et al.
merely disclose that the "aggregator may also comprise one or more crawlers, such as a content
crawler, to look for program content in one or more digital communication networks," as
discussed, supra.

        Examiner contends that Appellant fails to specifically point out the alleged error, i.e. the

specific claim limitation that is not met by the prior art of record. Rather, Appellant merely

misconstrued the prior art, by focusing on one element of the McCoskey reference, rather than

the teaching of McCoskey relied upon in the Final rejection, and did not focus on a limitation in

the claim language that McCoskey allegedly does not teach.

        Examiner contends that the instant rejection has presented a combination of prior art that

would have been obvious to one of ordinary skill in the art at the time of the invention, as all the

references are classified in class 725, Interactive Video Distribution Systems, and all generally

relate to searching for and/or displaying audio/video content.

On page 26, beginning at line 5, Appellant states:

However, the present application claims the following salient features, inter alia: **"providing at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword, the at least one smart filter providing step comprising providing each at least one smart filter being customizable for each at least one user, wherein the at least one smart filter simultaneously considers content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different data formats," and "wherein the at least one smart filter providing step comprises simultaneously considering content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different formats" and '~wherein the data processing unit utilizes the plurality of characterizing descriptors, the plurality of cascading filters, the control circuitry, and the support programming guide navigation."** [Emphasis added.] This being so, the present invention comprises at least one smart filter, comprising a plurality of cascading filters and an enhanced suggestion engine for simultaneously considering content across a plurality of media. The April 6, 2010, Final Office Action fails to explain how Sic et al.'s "personalized menu" may be modified to encompass the claimed features of "at least one smart filter[,]" "a plurality of cascading filters[,]" and "an enhanced suggestion engine[,]" inter alia, i.e., ascertained the differences between the prior art and the claims at issue. [Emphasis added.]

Examiner disagrees that the April 6, 2010 Final Office Action fails to properly explain

the rejection. Again, the "personalized menu" of Sie can be personalized by searching for content

that matches personal preferences. A search that eliminates certain content can be seen as a

filtering search, and thus the search engine performing such a search can be seen as a filter.

McCoskey discloses performing searches in parallel, which means simultaneously. Furthermore,

it would have been obvious to one of ordinary skill in the art at the time of the invention from the

teaching of Sie, Fries and McCoskey that if a user were to be presented with a personalized

program guide, such as Sie, Fig. 15, but with content from a plurality of media (taught in such

places as Fries, Fig. 4, or McCoskey, para. [0017]), that this content should be considered

simultaneously so as to present a user with a complete listing of available programming that

meets the filtering requirements. Therefore, It would have been obvious to one of ordinary skill

in the art at the time of the invention to modify Sie and Fries to include the enhanced suggestion

techniques as taught by McCoskey, as this would have produced the predictable and desirable

results of allowing users to further narrow their search for content, as well as expand their

options in terms of from where said content was being received.

On page 27, Appellant states:

As such, the Appellants respectfully submit that the Examiner fails to resolve the level of
ordinary skill in the art and has failed to show any evidence in the form of enabling details that
one of ordinary skill would modify Sic et al. to encompass the claimed features of **"providing at
least one smart filter for facilitating determination of a particular one of the discrete
selectable items of data, the at least one smart filter providing step comprising providing an
enhanced suggestion engine for making at least one recommendation based on at least one
parameter selected from a group consisting essentially of a content nature uniqueness, a
viewer identification, and a keyword, the at least one smart filter providing step comprising
providing each at least one smart filter being customizable for each at least one user,
wherein the at least one smart filter simultaneously considers content across a plurality of
media, thereby providing a coordinated joint display comprising a plurality of integrated
results, the plurality of integrated results comprising an aggregate pool of candidate
viewing choices being reducible on a basis of filter selection criteria from at least one
element selected from a group consisting essentially of a plurality of different sources and a
plurality of different data formats" and "wherein the at least one smart filter providing
step comprises simultaneously considering content across a plurality of media, thereby
providing a coordinated joint display comprising a plurality of integrated results, the
plurality of integrated results comprising an aggregate pool of candidate viewing choices
being reducible on a basis of filter selection criteria from at least one element selected from
a group consisting essentially of a plurality of different sources and a plurality of different**

formats" and °'wherein the data processing unit utilizes the plurality of characterizing descriptors, the plurality of cascading filters, the control circuitry, and the support programming guide navigation" as proposed in the April 6, 2010, Final Office Action, other than by a blanket statement. [Emphasis added.] As such, the Appellants respectfully submit that the Examiner has not sustained the rejection of the claims on the basis of obviousness, even under *KSR v. Teleflex.*

Examiner disagrees that the rejection was made using a "blanket statement," but rather that each combination was explained properly as required by Graham v. Deere, in light of the KSR ruling. For example, in the rejection of claim 1, Examiner explains that Fries discloses that "with the exemplary EPG manager, the viewer is freed from the repetitive and confusing task of......conventional approaches, [when] a viewer must browse (or search) each EPG separately (paragraph [0105], lines 1-2 and paragraph [0104], lines 1-2)." Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the aggregated EPG of Fries to enhance the method of Sie so that a user can use the selection criteria of programs from multiple transmission service providers to form a profile and more easily access programs that may be of interest. This would have produced predictable and desirable results, as it would allow users who had access to various different service providers to still efficiently sort through incoming program data. Further in the rejection of claim 1, Examiner states that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sie and Fries to include the enhanced suggestion techniques as taught by McCoskey, as this would have produced the predictable and desirable results of allowing users to further narrow their search for content, as well as expand their options in terms of from where said content was being received.

On page 28, beginning at line 1, Appellant states:

Further, the Appellants respectfully submit that the rejection on this basis is actually grounded in impermissible hindsight reconstruction by piecing together the cited references by using the Appellants' claimed invention as a roadmap. The Examiner has merely made a blanket statement that one of ordinary skill would combine the teachings of Sie et al. (US 2003/0233656), Fries et al. (US 2004/0078807), and McCoskey et al. (US 2003/0028889), without presenting any evidence thereof.

The relevant procedural section is MPEP § 2142 which provides that " ....In view of all factual information, the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. Knowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences," conduct the search and evaluate the "subject matter as a whole" of the invention. The tendency to resort to "hindsight" based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art." [Emphasis added.]

In response to Appellant's argument that there is no teaching, suggestion, or motivation to combine the references, the examiner recognizes that obviousness may be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992), and *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). In this case, Examiner disagrees that there is impermissible hindsight reconstruction, as the separate references of Sie, Fries and McCoskey all pertain to similar goals in a similar art, and therefore one of ordinary skill in the art at the time of the invention could have used the cited disclosures to arrive at Appellant's invention.

On page 28, beginning at line 18, Appellant states:

In the instant case, the Examiner has pieced together elements from the three cited references to arrive at the claimed invention. Where a claimed limitation has not been expressly or implicitly disclosed, e.g., **"providing at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword, the at least one smart filter providing step comprising providing each at least one smart filter being customizable for each at least one user, wherein the at least one smart filter simultaneously considers content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different data formats," "wherein the at least one smart filter providing step comprises simultaneously considering content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different formats" and "wherein the data processing unit utilizes the plurality of characterizing descriptors, the plurality of cascading filters, the control circuitry, and the support programming guide navigation,"** the Examiner merely makes a blanket statement that such limitation is "disclosed" or obviated without proffering any evidence thereof or rationale therefore. [Emphasis added.]

Again, Examiner disagrees that the rejection was made using a "blanket statement," but rather that each combination was explained properly as required by Graham v. Deere, in light of the KSR ruling.

For example, in the rejection of claim 1, Examiner explains that Fries discloses that "with the exemplary EPG manager, the viewer is freed from the repetitive and confusing task of......conventional approaches, [when] a viewer must browse (or search) each EPG separately

(paragraph [0105], lines 1-2 and paragraph [0104], lines 1-2)." Therefore, it would have been

obvious to one of ordinary skill in the art at the time of the invention to use the aggregated EPG

of Fries to enhance the method of Sie so that a user can use the selection criteria of programs

from multiple transmission service providers to form a profile and more easily access programs

that may be of interest. This would have produced predictable and desirable results, as it would

allow users who had access to various different service providers to still efficiently sort through

incoming program data. Further in the rejection of claim 1, Examiner states that it would have

been obvious to one of ordinary skill in the art at the time of the invention to modify Sie and

Fries to include the enhanced suggestion techniques as taught by McCoskey, as this would have

produced the predictable and desirable results of allowing users to further narrow their search for

content, as well as expand their options in terms of from where said content was being received.

Examiner further contends that Appellant fails to specifically point out the alleged error

in the above section, i.e. the specific claim limitation that is not met by the prior art of record.

On page 29, beginning at line 13, Appellant states:

In addition, the rule under MPEP § 707.07(g) provides for the avoidance of "Piecemeal
Examination" as follows: **"Piecemeal examination should be avoided** as much as possible. The
examiner ordinarily should reject each claim on all valid grounds available, **avoiding, however,
undue multiplication of references.** (See MPEP § 904.03.) ...." [Emphasis added.] In the instant
case, the Examiner has used a multiplicity of references in asserting these grounds for rejection
on this basis.

Examiner contends that Appellant is somewhat misreading the cited section of the MPEP.

For example, in this context "piecemeal" refers to the concept also known as "compact

prosecution;" that is, the advised course being that an Examiner should present all valid

rejections, be they 101, 112, 102, 103, etc., in an Office Action as soon as they are discovered,

rather than performing prosecution in a piecemeal fashion.

In response to Appellant's argument that the examiner has combined an excessive number

of references, reliance on a large number of references in a rejection does not, without more,

weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18

USPQ2d 1885 (Fed. Cir. 1991). Examiner does not in the instant case believe that three

references is an undue multiplicity of references. Further, this portion of the MPEP is referring to

the concept that it is not necessary to reject the same claim with five different 35 U.S.C. § 102

rejections, but rather the advised course would be to reject said claim one time with the best

reference.

C.   Examiner error in failing to treat Application as "special"

On page 28, beginning at line 1, Appellant states:

Further, the Appellants respectfully submit that the present application has now been
pending for over five years, i.e., **over six (6) years** as of the original filing date, **March 23,
2004,** of the present application. The relevant rules are as follows (MPEP §§ 707.02, 708.01).

707.02 Applications Up for Third Action and 5-Year Applications[R-2]

The supervisory patent examiners should impress their assistants with the fact that the shortest
path to the final disposition of an application is by finding the best references on the first search
and carefully applying them.

The supervisory patent examiners are expected to personally check on the pendency of every
application which is up for the third or subsequent Office Action with a view to finally
concluding its prosecution.

Any application that has been pending five years should be carefully studied by the supervisory patent examiner and every effort should be made to terminate its prosecution.

In order to accomplish this result, the application is to be considered "special" by the examiner.

708.01 List of Special Cases [R-2]
37 CFR 1.102 Advancement of examination.

The following is a list of special cases (those which are advanced out of turn for examination):

(A) Applications wherein the inventions are deemed of peculiar importance to some branch of the public service and when for that reason the head of some department of the Government requests immediate action and the *>Director of the USPTO so orders (37 CFR 1.102).

(B) Applications made special as a result of a petition. (See MPEP § 708.02.)
Subject alone to diligent prosecution by the applicant, an application for patent that has once been made special and advanced out of turn for examination by reason of a ruling made in that particular case (by the Director of the USPTO or a Commissioner) will continue to be special throughout its entire course of prosecution in the U.S. Patent and Trademark Office, including appeal, if any, to the Board of Patent Appeals and Interferences.

(C) Applications for reissues, particularly those involved in stayed litigation (37 CFR 1.176).

(D) Applications remanded by an appellate tribunal for further action.

(E) An application, once taken up for action by an examiner according to its effective filing date, should be treated as special by an examiner, art unit or Technology Center to which it may subsequently be transferred; exemplary situations include new cases transferred as the result of a telephone election and cases transferred as the result of a timely reply to any official action.

(F) Applications which appear to interfere with other applications previously considered and found to be allowable, or which will be placed in interference with an unexpired patent or patents.

(G) Applications ready for allowance, or ready for allowance except as to formal matters.

(H) Applications which are in condition for final rejection.

(I) Applications pending more than 5 years, including those which, by relation to a prior United States application, have an effective pendency of more than 5 years. See MPEP § 707.02.

(J) Reexamination proceedings, MPEP § 2261.

Thus, the Appellants respectfully submit that, since the present application has now received six (6) actions on the merit and has been pending for over six (6) years as of the original filing date of the present application, the present application should have been be treated as "special" by the Examiner under MPEP §§ 707.02 and 708.01 and that examination of the present application should have been, and should be, advanced. Therefore, the Appellants respectfully request that the grounds for rejection of Claims 1-20 on the foregoing bases are reversed and that remaining Claims 1-20 are passed to allowance in due course

Examiner's Response:

Examiner responds that the Application has been treated as special, and that prosecution has been advanced in a proper manner. The claims have been amended 5 times, on the following dates:

March 13, 2008,

September 2, 2008,

March 2, 2009,

August 19, 2009,

January 25, 2010, and

June 7, 2010 (not entered).

Each time, Appellant received a response in a timely manner to the newly amended claims. The following table shows the difference between claim 1 as filed on March 23, 2004 and the current iteration of claim 1:

Claim 1 as of March 23, 2004:	Claim 1 presently:
1. A method comprising: in an audio/video programming guide apparatus: - providing access to characterizing descriptors as individually correspond to a plurality of discrete selectable items of audio/video content, wherein at least some of the discrete	1. A method of selecting content by way of a multi-source interactive programming guide apparatus, comprising the steps of: providing access to a plurality of characterizing descriptors as individually correspond to a plurality of discrete selectable items of

selectable items of audio/video content differ from one another with respect to at least one of: - bearer media; - primary transmission service provider; - data format; - providing at least one selection criterion; - applying the at least one selection criterion with respect to the characterizing descriptors to provide a resultant selection of the plurality of discrete selectable items of audio/video content; - displaying programming guide information comprising information regarding at least a portion of the resultant selection	audio/video content, wherein the plurality of characterizing descriptors comprises at least two elements selected from a group consisting essentially of a programming network identifier, an indication of source, a network call sign for a station, a broadcast starting time, a broadcast stopping time, a description of the content, information pertaining to the content, an indication of a bearer medium, a sample of the content, a promotional sample of the content, a previously prepared trailer, and a preview of the content, and wherein a first plurality of the discrete selectable items of audio/video content differ from a second plurality of the discrete selectable items of audio/video content with respect to at least one parameter selected from a group consisting essentially of a bearer medium, a primary transmission service provider, and a data format; providing at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword, the at least one smart filter providing step comprising providing each at least one smart filter being customizable for each at least one user, wherein the at least one smart filter simultaneously considers content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different data formats; providing at least one selection criterion; applying the at least one selection criterion

	with respect to the characterizing descriptors of the first plurality of the discrete selectable items of audio/video content and the second plurality of the discrete selectable items of audio/video content to provide a resultant selection of the first plurality of discrete selectable items of audio/video content and the second plurality of the discrete selectable items of audio/video content; displaying programming guide information comprising information regarding at least a portion of the resultant selection; supporting a programming guide navigation; reviewing and browsing the information regarding the at least one portion of the resultant selection; if selecting a particular item of the plurality of discrete selectable items, providing a selection response; and if not selecting a particular item of the plurality of discrete selectable items, returning to the supporting step

Appellant is reminded that prosecution is a two-way street, and that it is a responsibility shared between Examiner and Appellant to achieve a streamlined prosecution. Thus, as Examiner acted to forward prosecution at every step of the Examination process, Examiner disagrees that the instant application was not handled in the appropriate manner necessary for a special application.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Josh Taylor/

Examiner, Art Unit 2426

Conferees:

Hai Tran
/HAI TRAN/
Primary Examiner, Art Unit 2426

/Joseph P. Hirl/
Supervisory Patent Examiner, Art Unit 2426
December 6, 2010